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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1380th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 10 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Thirteenth and fourteenth periodic reports of Malta (CERD/C/337/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Quintano (Malta) resumed his place at the Committee table.

2. Mr. QUINTANO (Malta), continuing to reply to the questions asked at the preceding meeting, said that the right to freedom of movement had a technical meaning, namely, that all Maltese citizens, including emigrants who returned to Malta, were entitled to leave and come back to Malta. Foreigners in Malta were free to go to any place on the island, except for out-of-bounds security areas.

3. Very detailed explanations on the cases referred to by the Country Rapporteur at the preceding meeting, had already been given in the Committee against Torture and the members of the Committee on the Elimination of Racial Discrimination could have a look at the relevant summary records. He nevertheless pointed out that, in one of those cases, the accused had been acquitted when the persons who had made the allegations had refused to give evidence. As far as procedure was concerned, the Government had set up a board of inquiry, brought the matter before the Prison Board and asked for the advice of the Attorney-General before bringing the persons to whom the alleged victims had consistently referred before the courts of justice. Those cases had not involved any racial element.

4. As to the status of refugees, the geographical reservation to the 1951 Convention would be officially removed when the relevant bill had been adopted. In practice, that geographical limitation had been abandoned a long time previously, as shown by the number of refugees who chose Malta. Malta had acceded to the 1967 Protocol relating to the Status of Refugees on 15 September 1971.

5. Article 18 (1) of the bill on refugees and asylum-seekers provided for the granting of work permits to recognized refugees. A very active Catholic voluntary organization was also helping refugees to find work and accommodation and, when necessary, to resettle those who so wished in third countries where they had relatives.

6. There was no difference in treatment between European and non-European refugees. Malta had very warmly welcomed over 100 Albanian refugees during the Kosovo crisis. Although there were no statistics on the total number of refugees, the figure appeared to be quite stable. Disputes involving refugees were settled by a mediator. Malta had quite a few immigrants who had been attracted by the favourable tax system, as well as many Libyans, because of geographical proximity. There were also Maltese who had emigrated and had come back to the country: at first, they were counted as "immigrants".

7. He had explained the machinery for the incorporation of treaties into internal law at the preceding meeting. In order to give effect to the 1988 United Nations Convention on Illicit

Traffic in Narcotic Drugs and Psychotropic Substances, for example, Malta had simply added two new chapters to its own provisions on drugs. The Constitution did not require that a law had to be enacted whenever Malta ratified a treaty.

8. The European Convention on Human Rights could, of course, be invoked directly in Maltese courts and the procedure was free of charge.

9. Maltese society was a liberal society where the basic principle was that everyone was free to do what was not prohibited by law. It was thus possible to designate anyone as an heir, since no law prohibited it. The question of "positive discrimination" in favour of women had been dealt with during the amendment of article 45 of the Constitution in 1991. No special laws had been enacted to favour women, but there had been a lively debate in the press and in the media about whether a certain percentage of parliamentary seats should be allocated to women.

10. There was no discrimination in respect of adoption, marriage, divorce or inheritance. In the past, the question of burials had given rise to some problems because a distinction had been drawn between practising Catholics and other citizens. However, the problem had now been settled and everyone was free to buy a plot in any cemetery.

11. Discrimination in housing worked to the advantage of foreigners, since it was very difficult to evict a Maltese tenant.

12. Some members of the Committee had said that the provisions of the new Police Code established under the 1997 Act were too vague and thus not protective enough of the victims of police abuse. In fact, the victim was the policeman himself, since he had to be constantly on the lookout to ensure that he was treating everyone equally. In reply to a specific question, he said that disciplinary measures against police officers could include loss of salary, suspension from service and even dismissal. A policeman guilty of a criminal act was brought before the courts in the same way as any other citizen.

13. With regard to incitement to racial hatred, a bill now before parliament provided that anyone who used threatening, abusive or insulting words or behaviour or displayed any written or printed material which was threatening, abusive or insulting with intent to stir up racial hatred was liable to 6 to 18 months' imprisonment. "Racial hatred" meant hatred against a group of persons defined by reference to colour, race, nationality or ethnic or national origin. That text went beyond the Press Act and, in the opinion of the Maltese authorities, should cover article 4 of the Convention satisfactorily.

14. The Committee had expressed surprise that no case of incitement to racial hatred had been brought before the Maltese courts. There were isolated cases of persons who complained of having been offended because of their skin colour or for other reasons. Some allowances must, however, be made and insults by football supporters against players from an opposing team who were not the same colour could not be said to be racist.

15. In any event, it must be stated that Malta had no organizations whose sole aim was to incite racial hatred and no political party which had racial discrimination as part of its ideology. There had also not been any examples of attacks on private individuals simply because they

belonged to another race. As to the refusal of entry to certain premises on racial grounds, there should be no mistaking the intentions of owners of bars, night clubs and other places of entertainment who were simply trying to prohibit entry into their establishments to persons known as troublemakers.

16. It had been asked whether incitement to racial hatred on the Internet was covered by law and, in order to answer that question, it would be necessary to know whether the word "broadcast" used in the Press Act applied to information broadcast on the Internet. Since he was not an expert, he could not say.

17. On a technical point, it had been asked whether article 45 of the Constitution of Malta, the text of which referred to government authorities, could also be applicable to private individuals. To his knowledge, there had been at least one case in which that article had been applied to a registered company in which the Government had had some form of presence or control. Another case of that kind involving a football club was now pending, but the outcome would have to be known before it could be said that what was known in German as "Drittwirkung" (applicability to a third party) was really part of Maltese law.

18. A question had also been asked about states of emergency. No state of emergency had been proclaimed in Malta for a long time. However, even if a state of emergency was in force, the provisions of human rights conventions continued to apply at the same time as constitutional provisions governing states of emergency.

19. The Employment Commission had been established in 1974 to ensure that no one was discriminated against in his employment because of his political beliefs. The Commission was very active and exercised the same functions as the first division of the civil court.

20. The official languages in Malta were Maltese and English and Italian was spoken more or less fluently in some parts of the island. Laws were promulgated and lectures and lessons delivered in both English and Maltese. Information for the public was sufficient. The Convention had been translated into Maltese, but many people preferred to read the text in English.

21. The comments on the inconsistency between paragraphs 4 and 8 of the report had no basis in fact. The Criminal Code was being amended to punish the acts referred to in article 4 of the Convention not because that had been socially necessary, but so that the Maltese Government could not be told that such a provision was missing.

22. With regard to the right to own property, he referred to article 37 of the Constitution, the relevant provisions of which were reproduced in paragraph 49 of the report.

23. Mr. DIACONU (Country Rapporteur) welcomed the high-quality dialogue with the representative of Malta. He was pleased that the State party had taken account of the comments the Committee had made during the consideration of the preceding report by making the necessary amendments to its legislation and that other amendments were also planned, especially those relating to the implementation of article 4 of the Convention.

24. He also stressed that a very close watch must be kept on isolated cases of racial discrimination to prevent that problem from spreading among the authorities and the population of Malta.

25. He hoped that the dialogue between Malta and the Committee would continue along the same lines, since Malta was a transit country where many cultures and nationalities lived side by side.

26. The CHAIRMAN thanked the representative of Malta for replying to the Committee's many questions and said that the Committee had completed its consideration of the fourteenth periodic report of Malta.

27. Mr. Quintano (Malta) withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 6)

Draft statement by the Committee on the ethnic dimension to some contemporary conflicts (CERD/C/56/Misc.23/Rev.1, document distributed in the meeting room in English only)

28. The CHAIRMAN invited the members of the Committee to consider document CERD/C/Misc.23/Rev.1.

29. Mr. BANTON said that he had drafted the text on the basis of statements by the High Commissioner for Human Rights on matters of major importance. In paragraph 3, the words "the Russian military" should be replaced by the words "the Federal forces". In the following sentence, the words "international law" should be replaced by the words "international humanitarian law". At the end of the first sentence of paragraph 4, the words "and that in Kosovo" should be added after the words "in Bosnia". The beginning of the next sentence might be amended to read: "It believes that popular interpretations of ethnic differences contributed", since those words were more accurate than the words "It believes that ethnic differences contributed". The last sentence of paragraph 5 dealing with Austria was in square brackets because it was not certain that it belonged in such a statement. As the Committee could institute urgent action procedures at any time, it might not be necessary for the statement to specify that the Committee reserved the possibility of taking such action in respect of Austria.

30. Mr. ABOUL-NASR said that statements by the High Commissioner for Human Rights should of course be used, but only for standardized terminology purposes. He would have preferred the text to refer to a statement by the Committee, not a statement by the High Commissioner for Human Rights. It would also have been better to deal first with the question of Chechnya, rather than with that of Indonesia, because the situation in Indonesia was in the process of being settled, at least as far as East Timor was concerned. Similarly, the problem of Chiapas should be referred to not in the second paragraph, but later, because there were more burning topics. He agreed with Mr. Banton's proposals on paragraph 3.

31. Mr. BRYDE said that, although the text did have to reflect the Committee's views, there was no getting around the fact that it was the High Commissioner who had drawn those problems to the attention of the Committee and the international community. A compromise therefore had to be found.

32. Mr. de GOUTTES said that he had no objection if the Committee explicitly used significant statements by the High Commissioner for Human Rights in making its own statements on situations that gave rise to concerns about the implementation of the Convention, provided, of course, that the right wording was found. To that end, the Committee would have to elaborate on the statements by the High Commissioner it used and give them "added value", for example, by situating them in the context of its own early warning measures and urgent action procedures.

33. With regard to the reference to Austria, he was inclined to think that, even if potential developments in the situation in that country were not strictly within the framework of the Committee's terms of reference, it should not remain silent and inactive, in view of the legitimate concerns to which that situation gave rise. The Committee should therefore decide to state its views on that question in the text under consideration or in a separate statement. If it chose the second solution, it could include a sentence at the end of the statement saying that it reserved the possibility of monitoring developments in the situation in Austria.

34. Mr. BOSSUYT said that, in its statement, the Committee should avoid using exactly the same terms as those in statements by the High Commissioner, in which he found that there was a lack of uniformity and balance with regard to the human rights situation in the countries referred to, namely, East Timor, Mexico, Burundi and Chechnya. Initially, the Committee might, for example, say that it was concerned about the disturbing human rights situation in those four countries and then include several subparagraphs on each one.

35. At the end of paragraph 4, he proposed that the word "investigations" should be replaced by the word "endeavours" because it better reflected the High Commissioner's activities, which did not, strictly speaking, involve investigations into large-scale human rights violations.

36. He fully agreed with Mr. de Gouttes' comments on the need to elaborate on the High Commissioner's statements, particularly by viewing them in terms of early warning measures and urgent action procedures in the context of paragraph 4.

37. He also agreed with Mr. de Gouttes that the new situation in Austria should be referred to separately because it was clearly of a political nature.

38. Ms. McDOUGALL said that the purpose of the draft statement did not stand out clearly enough. Like Mr. de Gouttes and Mr. Bossuyt, she was of the opinion that, in paragraphs 4 and 5, the Committee should take the opportunity to elaborate on statements by the High Commissioner by referring to the question of ethnic conflicts at the beginning of the text and stressing from the outset that those conflicts in the territories in question were fully within the scope of the Convention and that the Committee should therefore consider them in the context provided for in that regard, namely, early warning measures and urgent action procedures.

39. She did not understand why only the ethnic conflicts in Bosnia and Kosovo were referred to in paragraph 4. She was also not sure whether the Committee had considered the true causes of ethnic conflicts in great enough depth, since they were often the result of the cynical exploitation of ethnic differences by political leaders.

40. She was also of the opinion that the situation in Austria should be dealt with in a separate statement to be prepared during the session.

41. Mr. FALL said he agreed with Mr. Aboul-Nasr that the Committee's statement should have its own characteristics, even if it was based on statements by the High Commissioner. As they now stood, the first three paragraphs made the new text look like a statement by the Committee on the statements by the High Commissioner. In addition, only paragraphs 2 and 3 dealt with questions which fully related to the agenda item on early warning measures and urgent action procedures. In order to expand on statements by the High Commissioner, as Mr. de Gouttes and others would like, the Committee had the possibility of considering certain measures relating to the countries in question under early warning measures and urgent action procedures.

42 With regard to the prevention of racial discrimination, the Committee might also consider the new developments in Austria, which seemed to reveal a disturbing trend in Europe, namely, the rise of the extreme right, some aspects of which came directly within its terms of reference. It should therefore not remain silent and passive about that problem.

43 Referring to Africa, he drew the Committee's attention to the disturbing situation which had recently been developing in Nigeria, where particularly serious ethnic and religious conflicts had caused the death of hundreds of persons in January 2000 following the promulgation of shariah law in some States of the Nigerian Federation. Those events threatened to have a deeply disturbing effect on Nigeria, a key country for regional stability. He was of the opinion that the Committee should therefore also consider that disturbing situation in Nigeria under the agenda item on prevention of racial discrimination (early warning measures and urgent action procedures)

44 Mr. NOBEL said that it would be difficult for the Committee to use the relevant statements by the High Commissioner, as Mr. Aboul-Nasr seemed to wish, without betraying the origin of its own statement. The Committee did not have any means of conducting its own investigations, research and activities in the areas in question and it therefore had to use documents originating with other international human rights bodies and organizations.

45 As to substance, he was also of the opinion that the Committee should be absolutely sure that the ethnic conflicts referred to in its statement were genuinely the result of ethnic differences, not of the manipulation of those differences by politicians.

46 He also considered that the Committee should keep a close watch on developments in the situation in Austria, to which it might devote a separate paragraph or sentence stating that it had to monitor situations such as that in Austria, which might lead to violations of the Convention.

47. The situation in Bosnia and Kosovo should be referred to in the statement.

48. He proposed that the title of the statement should be replaced by one which would refer to contemporary conflicts causing serious violations of the Convention. Paragraph 3 should refer to standards of human rights and international law and paragraph 4 should mention the exploitation of ethnic differences, rather than just "ethnic differences".

49. Mr. YUTZIS said he believed that there was a consensus in the Committee on the proposal that the statement should have its own characteristics while being based as much as possible on the relevant statements by the High Commissioner and the proposal that the wording and balance of the text on the presentation of the ethnic conflicts in question and the importance attached to them should be improved. There was, above all, a consensus on the suggestion that the statements by the High Commissioner should be elaborated on by situating them in the context of early warning measures and urgent action procedures. He pointed out, however, that experience had shown that such measures and procedures usually came too late, once the conflicts to which they related had already broken out, because the signs had not been detected in time. That point should be emphasized by indicating, in the third sentence of paragraph 4, that, in future, the international community should act well enough in advance in order to prevent large-scale human rights violations of a racist nature.

50. He also considered that the Committee should try to study the causes of ethnic conflicts in order to arrive at common definitions. Unlike Mr. Banton, the author of the draft statement, he personally was of the opinion that ethnic conflicts were caused not by ethnic differences, but by attempts by persons who refused peaceful coexistence between ethnic communities to eliminate such differences.

51. He agreed with the proposal that the situation in Austria should be dealt with, preferably separately. In that connection, the Committee should take account, in dealing with prevention, of particular situations which arose when persons who exploited ethnic differences for political purposes had been brought to power by regular democratic elections reflecting the will of the people.

52. He proposed that a working group should be set up to prepare the text of the Committee's statement.

53. Mr. SHAHI said that the idea of using statements by the High Commissioner and elaborating on them on the basis of the approach proposed by Mr. de Gouttes did have advantages, particularly in view of the limited resources available to the Committee for the conduct of its own investigations and the fact that it had not made any recent statement on all the situations referred to in the draft. In that connection, he was surprised that the High Commissioner had apparently not made a statement on the situation in Sierra Leon, where serious and large-scale human rights violations were taking place. He therefore proposed that the Committee's statement should refer to Sierra Leon and to the situation in Nigeria, to which Mr. Fall had had quite rightly drawn attention.

54. He also agreed with the idea that the Committee should consider the question of ethnic differences that led to ethnic conflicts as a result of their cynical exploitation for political purposes, as in the former Yugoslavia and Rwanda, where political leaders had subsequently been sentenced by the competent ad hoc international courts.

55. With regard to Austria, he agreed with the general approach suggested by Mr. Nobel because he thought that the Committee should not state its views on that matter until it had carried out a detailed examination of the racist aspects of the situation in that country, where serious violations had not yet been committed. He also stressed that account must be taken of the specifically European aspects of the situation in Austria, which was a delicate one because any intervention by the international community, including the Committee, had to take the popular will of the country's voters into consideration. The Committee should therefore discuss the question of Austria in greater depth and refrain for the time being from referring to it in the draft statement.

56. He fully supported the proposal by Mr. Yutzis that a working group should be set up to prepare the final text of the statement on the basis of the comments and suggestions made during the exchange of views.

57. Mr. GAHAM (Representative of the Secretary-General, Acting Chief of the Support Services Branch, Office of the United Nations High Commissioner for Human Rights) said he did not think that it would be a problem if the High Commissioner for Human Rights was quoted in statements by the Committee, but he wondered whether the fact of including those statements was in keeping with the provisions of the Convention. He was also surprised that a statement by the Committee should be based on statements by the High Commissioner because it was the reverse that should occur. It would be better to refer to the High Commissioner and commend her on her activities in general than to quote her views on some specific situations which were very sensitive. In reply to a question by the Chairman, he said that the High Commissioner had not made a statement on Nigeria.

58. Mr. LECHUGA HEVIA said he agreed with other members that the comments and statements to be included in the document on situations of human rights violations relating to racial discrimination should not only be of the Committee's own making, but should also be the key focus of the document.

59. Like Mr. Valencia Rodriguez and Mr. de Gouttes, he agreed with Mr. Fall's proposal that a statement should be included on the situation in Nigeria. He did not, however, think it appropriate to make Austria a topic of concern in its own right. He proposed that the Committee should, instead, make a statement on the rise of extreme right political parties in the world and that Austria should be cited as a recent example.

60. Mr. VALENCIA RODRÍGUEZ said that, in order to prevent the document from giving the impression that it owed its existence to statements by the High Commissioner, the Committee

should consider new wording in which those statements would be presented as a reaffirmation of the attitude the Committee had always taken towards conflicts of a racial nature, namely, that early warning measures and urgent action procedures should be adopted.

61. Mr. RECHETOV said that the problem to which the quotation of statements by the Higher Commissioner gave rise was that the Committee had closely followed some of the situations to which she had referred, but was not at all familiar with others. He therefore considered that the order in which the situations were mentioned should be changed and that the conflict in Kosovo should be mentioned first. That was a question the Committee had been dealing with in depth since 1993, having discussed it every year, sent two of its members to look into the situation on the spot and considered four reports by the Federal Republic of Yugoslavia. The situation was serious because there was every reason to fear that the last Serbs still living in that region would be expelled, and that was one aspect of ethnic cleansing.

62. Developments in the situation in Austria should be monitored, but statements by the Committee should not attach too much importance to that question.

63. Mr. DIACONU proposed that a sentence should be drafted in which the Committee said that it took note of the statements by the High Commissioner, followed by a list of the violations to which she referred. As far as Austria was concerned, it would be enough for the Committee to follow developments in the situation closely to see whether the Government's policy changed to the extent of affecting the implementation of the Convention.

64. Ms. ZOU, supporting Mr. Aboul-Nasr's views, said that statements by the High Commissioner took up too much room in the Committee's draft statement and that the first three paragraphs should be merged. Comments on Austria did not belong in the statement and she supported Mr. Valencia Rodríguez's proposal that they should be included in a separate document for the preparation of which a working group should be set up.

65. Mr. BRYDE said that he agreed with the choice of wording proposed by Ms. McDougall and Mr. Nobel, although he preferred the word "manipulation" to the word "exploitation" of ethnic differences, since persons who tried to provoke conflicts sometimes did more than exploit ethnic differences and actually invented them. If the Committee included a comment on that type of problem in the statement, it could refer to Austria at the same time, as it had done in its concluding observations on France, by condemning groups which exploited and advocated racial hatred, not the country's voters.

66. Mr. ABOUL-NASR requested the members of the Committee who wanted a comment on Austria to be included in the statement to prove that Mr. Haider had expressed views which violated the Convention. Why would the Committee cite the case of Austria and not that of Israel, a country where the Minister for Foreign Affairs and the representatives of some government parties held openly racist views?

67. Mr. BANTON said he welcomed the fact that a consensus was taking shape in the Committee on the concept of "ethnic conflict". He would amend the draft statement on the basis of the comments made and agreed with the proposal for the establishment of an open-ended working group.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Place of the Committee's sessions

68. Mr. GAHAM (Representative of the Secretary-General, Acting Chief of the Support Services Branch, Office of the United Nations High Commissioner for Human Rights) said that he would be in a position to communicate information on the question of the holding of a session of the Committee in New York by the end of the current session.

The meeting rose at 1 p.m.